IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9142 OF 1998

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT MINERAL DEVELOPMENT CORPORATION
VERSUS
JAYANT SHRIRAM KALAL

Appearance:
MR KM PATEL for Petitioner
MR AK CLERK for Respondent

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:30/12/1999

C.A.V. JUDGMENT

#. The Gujarat Mineral Development Corporation Limited, Ahmedabad, feeling aggrieved of the award in Reference

(LCA) 2/92, made on 14th August, 1998, by Labour Court, Ahmedabad, prefers this special civil application under Article 226 and 227 of the Constitution of India. Under the impugned award, the Labour Court, Ahmedabad, allowed the reference made to it at the instance of the workman by the State Government partly and the order dated 5.9.91 of the petitioner under which the services of the respondent-workman were dispensed with was quashed and set aside. Direction has been given under the impugned award to the petitioner to reinstate the respondent-workman on his original post with continuity of services and 30% of backwages.

#. The respondent-workman was appointed as selection grade Assistant in the services of the petitioner-Corporation on 16th December, 1971. The appointment order of the respondent-workman, as per petitioner's case, contained express condition of his transfer anywhere in the State. So the services of the respondent-workman were transferable. On 5.1.87, the respondent-workman was ordered to be transferred from Ahmedabad head office to Bauxite Mines Project, Bhatia, in the District of Jamnagar. The respondent-workman refused to accept the order of transfer and relieving order. He was informed by petitioner by telegram that he is transferred to Bhatia and relieved from Ahmedabad. The respondent-workman challenged this order of the petitioner-Corporation in this Court by filing writ petition being Special Civil application No.3348 of 1987. It is not in dispute that in that Special Civil Application, this Court has not granted any interim relief in favour of the respondent-workman. Vide memo dated 13th April 1988, the petitioner-Corporation issued chargesheet to the respondent-workman for his grave and serious misconduct of not reporting for work at Bhatia Project. On 28th December 1999, the Special Civil Application No.3348 of 1987 filed by respondent-workman was dismissed by this Court. After holding inquiry on the chargesheet served, vide memo dated 13th April 1988, and the misconduct having been found proved of disobedience of lawful and reasonable order and absence without leave, etc., the services of the petitioner were brought to an end under the order dated 6.9.91. The respondent-workman against the decision of the learned Single Judge of this Court dated 28th December 1990 in Special Civil Application No.3348 of 1987, preferred appeal being L.P.A. No.92 of 1992 which came to be summarily rejected on 2nd July, 1992 by the Division Bench. The respondent-workman raised industrial dispute in the matter of his termination of services which was ultimately referred to the Labour Court, Ahmedabad for

adjudication.

#. The respondent-workman filed Misc. Civil Application No.1918 of 1992 in L.P.A. No.92 of 1992 for review of the order dated 2.7.92 of the Division bench in the L.P.A. This Misc. Civil Application was rejected by the Division Bench on 24.11.92. The award impugned in the Special Civil Application came to be made as stated earlier, by the Labour Court, Ahmedabad, on 14th August 1998, which was published on 1st September, 1998.

#. The petitioner filed this writ petition in this court on 2nd November 1998. It was placed in the court on 9.11.98 for preliminary hearing. The petition was admitted and Mr.Clerk put appearance for respondent and waived service of Rule. Interim relief in terms of para 12(B) subject to the provisions of Section 17-B of the Industrial Disputes Act, 1947, has been granted which continues till this date. The writ petition has been contested by respondent-workman. He filed reply affidavit. The respondent-workman filed further affidavit on 20th November 1998.

#. Mr.K.M.Patel, learned counsel for the petitioner contended that in the facts of this case, the conduct of the respondent-workman not to join at transferred place is grave and serious. It is a case where lawful orders of the superior officer were flagrantly disobeyed by the respondent-workman. His services were transferable and when this order has been passed and he could not get any interim relief from this Court, he should have joined at the transferred place. The petitioner has reasonably waited for the outcome of the writ petition filed by respondent-workman but still when he has not joined for considerable long period, taking it to be a serious and grave misconduct, chargesheet has been served. Even after serving the chargesheet, the respondent-workman has not cared to join at transferred place. Worst part is of his conduct not to join at transferred place even after dismissal of Special Civil Application by this Court and that judgment has been confirmed in the L.P.A. also. Till his services were terminated he has not joined at transferred place. The order of transfer of the respondent-workman was held to be valid by learned Single Judge of this court and which decision has also been affirmed by the L.P.A. This is a serious and grave misconduct for which the minimum penalty on proof thereof and which has been proved, was of dismissal of the petitioner from services which has been done in the present case. The Labour Court has found as a fact that termination of services of respondent-workman by

petitioner is not invalid or illegal. The Labour Court has recorded finding of fact that it is not a case of unfair labour practice and victimization of the workman. It has also been accepted as a fact that the finding given by the inquiry officer on the charges in the inquiry are not perverse. The Labour Court has not accepted that the respondent-workman has been transferred keeping grudge and victimization against him and inquiry is held. So on merits, Mr.Patel contends that the Labour Court has accepted that the respondent-workman has committed serious and grave misconduct. Inquiry was fairly conducted, the charges were found proved by the inquiry officer and penalty given thereon is correct. After this finding and for grave and serious misconduct, the Labour Court should not have interfered with the quantum of punishment as imposed upon the respondent-workman by petitioner on proof thereof, it is not the case where powers as conferred upon the Labour Court under Section 11-A of the Industrial Disputes Act, 1947, should have been exercised in favour of respondent-workman. It is a case where the respondent-workman has not joined at transferred place. After transfer, his writ petition and L.P.A. have been dismissed and it was not taken to be a case of victimization or unfair labour practice, still the Labour Court has interfered with the punishment and this award has come up as if it is a gift from the Labour Court. Not only reinstatement has been ordered of the workman but 30% backwages have been granted. In his submission, this award is perverse award and it is a case where this Court may interfere with the same and quash and set aside it. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of the Apex Court in the case of Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani, reported in AIR 1989 SC 1433 and in the case of Lucas India Service Ltd. v. Labour Court, Madras, reported in 1998(1) LLN 350 (SC). It is lastly contended by Mr.Patel that the award of the Labour Court is wholly perverse. Even if the Labour Court has powers under Section 11-A of the Industrial Disputes Act, 1947, to reduce penalty imposed by the management upon the delinquent employee, in this case, no penalty in fact has been given to the respondent-workman. If the dismissal / termination of the respondent-workman from services was taken to be excessive or harsh or disproportionate, then it should have been substituted by appropriate lesser penalty but it has not been done. Despite of the fact that the Labour Court has accepted that the respondent-workman has committed serious and grave misconduct and further finding given in favour of petitioner but it has in fact granted all the reliefs to

the respondent-workman. Withholding of 70% of backwages is not penalty, more so a substituted penalty in place of termination. In such cases, it is always open to the Labour Court to withhold full or partial backwages where the misconduct alleged against the workman has been proved. Withholding of backwages is not one of the enumerated punishments. This award in view of this fact, Mr.Patel contends, is virtually a lottery or a gift from the Labour Court to the workman who has committed grave and serious misconduct and this Court has not granted any relief to him in the writ petition filed by him challenging his transfer order.

#. On the other hand, Mr.A.K.Clerk, learned counsel for respondent-workman argued in support of the justification of the award of the Labour Court impugned in this special civil application. It is submitted that the Labour Court is conferred with powers under Section 11-A of the Industrial Disputes Act, 1947 to appropriately substitute its own penalty for the penalty imposed upon the respondent-workman by the employer for proved misconduct. Mr.Clerk submits that it is the discretion of the Labour Court in an appropriate case to reduce penalty. Confronted with the award of the Labour Court, and in this case where no penalty has been imposed upon the respondent-workman for proved misconduct by Labour Court, Mr.Clerk submits that withholding of 70% backwages is a substituted penalty. It is next contended that under Article 227 of the Constitution of India, this Court may not interfere with the just and reasonable award passed by the Labour Court. In his submission, the son of the workman was seriously ill and looking to his illness, it was not possible for him to carry out the transfer order. Because of this reason, on his request, he was brought to Ahmedabad and again he was transferred from Ahmedabad, and for the reason of his illness of his son, he was justified not to carry out the transfer order. In support of his contention, Mr.Clerk placed reliance on the following decisions:

- AIR 1979 SC ...30

- AIR 1984 SC 38

- 1996(1) LLJ 488

- 1995(2) LLJ 619

- 1982 FLR 54 (Mad.)

- 1982 FLR 765

- 1982 FLR 309

- 1978 FLR 625 (SC)

- 1981 FLR 626

- 1994 FLR 870 (Guj.)

#. I have given my thoughtful considerations to the rival contentions raised by learned counsel for the parties.

#. It is a case in which no dispute can be raised that the services of the respondent-workman were transferable. The respondent-workman was transferred under the order of petitioner dated 3.1.87 from Ahmedabad head office to Bauxite Mines Project Bhatia, District: Jamnagar. This order of transfer has been challenged by petitioner before this court by filing Special Civil Application No.3348 of 1987 which came to be dismissed on 28th December 1990. The Letters Patent Appeal preferred by respondent-workman, i.e. L.P.A. No.92/92 has also been dismissed summarily on 2nd July 1992. On transfer, an employee has three options. First, he has to, on relieving from the transferred place, proceed to join at transferred place, second, to make a representation, or representation-cum-appeal to the higher authorities where he has any grievance or some personal difficulties to carry out the transfer order. However, where he decides to file appeal-cum-representation or representation in the matter, by mere filing of the same, it cannot be taken to be as if the transfer order shall stand in abeyance or that he was not required to carry out the transfer order. If within a joining period permissible to him, the authority has not stayed the transfer order or ordered to keep the same in abeyance, he has to proceed to the transferred place to join the post. In case where the higher authority has granted the stay order or the order was ordered to be kept in abeyance, then he may not proceed to the transferred place. Third, to challenge the transfer order by filing special civil application before this court or where it is appealable by filing appeal to the Gujarat Civil Services Tribunal, where he is a Government servant or any other appropriate redressal forum available in the form of appeal or to approach to the civil court by filing civil suit. Again, by merely filing of the special civil application or application before the tribunal or suit in the civil court, if interim relief has not been granted and thereby he is not protected, it cannot be taken to be a

sufficient ground for him not to comply with the transfer order. In the case in hand, the petitioner has opted for third option. Being aggrieved of his transfer order, he filed Special Civil Application No.3348 of 1987 before this Court. From the record of the special civil application, I find that the petitioner was not protected by this court, but still he has not complied with the transfer order. Non compliance of the transfer order by an employee of the Corporation is a serious and grave misconduct. It is insubordination as well as disobedience of the order of superior officers and it is a serious and grave misconduct. For this, rightly the petitioner-Corporation has given chargesheet to him vide memo dated 13th April 1988. Even after giving of the chargesheet, he has not cared to comply with the order of transfer. On 28th December 1990, the special civil application has also been dismissed by this Court. After dismissal of the special civil application, he has not cared to comply with the order of transfer. It is not the case of respondent-workman that in the L.P.A., he has been protected by the Division Bench. This L.P.A. is of the year 1992. The very fact that inquiry has proceeded and ultimately the respondent-workman was dismissed/ terminated from the services under the order dated 6.991 of the Corporation goes to show that in the L.P.A. no interim relief has been granted in favour of the respondent-workman. These facts give out and clearly establish that the petitioner has no respect for rules, regulations, service conditions and he is not a law abiding employee. He is a person who considers himself to be above his superior officers and a judge in his own cause. When the transfer order has been made irrespective of the fact that it may cause difficulties to him to carry out the same but being an employee of the Corporation, if this order has not been stayed or kept in abeyance by the higher officers or he has not been protected by the civil court or this court, it is his legal obligation and duty to carry out the same. He cannot, on the basis of his own difficulties and inconvenience not to carry out or take a decision not to comply with the same. This is clearly a case where the petitioner has acted in a manner not befitting to the employee of the Corporation. Once he has opted for services of the Corporation which are transferable, he has to comply with all the lawful orders of the superior officers unless the same are stayed by the higher officers or by the Court. He cannot take an exception to the order only on the ground that it is not convenient to him to carry out the same. His difficulties or personal inconveniences to carry out the transfer order that can not be made a ground to not comply with it. Being an

employee of the Corporation, he has no such discretion. If it was inconvenient to him, or the transfer order caused some inconvenience to him, the only option for him was to leave the services but he could not have taken a decision himself not to comply with this order. Moreover, I fail to see any justification in the conduct and approach of the respondent-workman, when the court has not protected him, not to carry out this order. This adamancy of respondent-workman not to carry out the order even after the court has not protected him goes to show that he took it to be a prestigious issue and he took himself to be above the law and the officers of the Corporation. It was a clear case of grave and serious misconduct and for which the Corporation is perfectly legal and justified to give chargesheet to him vide memo dated 30th April 1988.

#. Before proceeding further, here, I may consider it to be appropriate first to deal with the ground given by the learned counsel for respondent-workman not to carry out this transfer order. It is stated that this transfer order causes personal hardship and manifold difficulties and family circumstances were also of such a nature where he could not have carried out this transfer order. To elaborate this, the learned counsel for the respondent states that his son was seriously ill and treatment of ailment from which he was suffering is available in Ahmedabad. For this reason, earlier he was transferred to Ahmedabad and again he could not have been transferred to Bhatia, District: Jamnagar. So in sum and substance the ground is that he has personal difficulties and hardship to carry out this transfer order.

##. This aspect has been projected, pleaded and placed for consideration by respondent before this court in the special civil application No.3348/87. The order of transfer has been challenged on the ground that it will cause inconvenience and difficulties to him. This aspect has been considered by this court and it was not taken to be a ground to quash and set aside the transfer order. The relevant discussion on this point of this court in the decision given in special civil application No.3348 of 1987 decided on 28th December 1990, reads as under:

> 17. In so far as the second ground of attack on the impugned transfer order is concerned, it may be mentioned that the petitioner has contended in para 7 of the petition that the family circumstances of the petitioner are so compelling which also required interference of this Court against the impugned transfer order. It is an

admitted fact that the petitioner was transferred to Ahmedabad from Ambaji Project in 1983, on his request, on personal grounds. His representation to the respondents-management was acceded. The petitioner has further averred in his petition, in para 7, that he was transferred to Ahmedabad on medical grounds, particularly in view of the fact that his son was suffering from serious illness and that his son was required to take treatment in Civil Hospital, at Ahmedabad. It is further contended that the said treatment is not available at any other place. It may be indicated at this stage that mere personal difficulty or family circumstance of the petitioner even if they are assumed to be genuine and correct, would not be ipse dixit sufficient to prevent the management or master from passing transfer orders on administrative exigencies. Could it be conceived even for a moment that the family circumstance and personal hardship could constitute a sufficient and valid ground to quash the transfer order by resorting to the extraordinary remedy provided under Article 226 of the Constitution? The spontaneously answer would be in the negative. Needless to mention that in a case of transferable post, hardship to some extent may be inherent. The person affected by the transfer order may have personal or family difficulties. In such a situation, would it be expedient to encourage the practice of rushing to the Court, invoking the extraordinary provisions of Article 226 of the Constitution of India? Again the answer would be in the negative, it cannot be said that there is no other alternative remedy or forum where his personal difficulty or family difficulty could be shown. Petitioner has not made any representation to the management on this ground which is, now, raised in this petition. It was open for the petitioner to agitate this grievance before the management or the concerned transferring authority. Having not been done or not resorting to such a remedy, the petitioner has challenged the impugned transfer order invoking the aids of the provisions of Article 226 of the Constitution. It is a matter of common understanding that transfer entails at times, some difficulties and hardship to the employee concerned or his/ her family members. But, it would not be proper and advisable to straightway rush to the Court for relief under Article 226 of the Constitution of India. The

impugned order came to be passed on 3.1.1987. The petition came to be filed on 10.7.1987. The petitioner has never made any representation to the management against his transfer on the ground of said pressing family circumstances, as alleged, now, in this petition, during the period from 3.1.1987 till 10.7.1987. Therefore, it is contended on behalf of the respondents that under the guise of victimization and/or family circumstances, the petitioner does not want to go out of Ahmedabad. This contention cannot be slightly brushed aside.

##. The decision of this court is very clear and it is binding on the petitioner. This justification furnished by him not to comply with the transfer order is hardly of any substance, merits as well as is of little help to him.

##. The industrial dispute raised by respondent-workman has been referred to the Labour Court, Ahmedabad, and from the award impugned in this special civil application, I find that on merits, it is held by the Presiding Officer, Labour Court, Ahmedabad as under:

> "I do not accept the argument advanced before me by learned advocate Shri Patel for the applicant on the point that the findings given by the Inquiry Officer in the inquiry are perverse."

It is to be noticed here that by filing Purshis ex.10, the respondent-workman has declared and disclosed that he is not challenging the legality of departmental inquiry. The Labour Court recorded findings after properly appreciating and discussing all the facts and evidence and I do not find any perversity therein. The finding of the Labour Court on the question of victimization etc. reads as under:

> "I do not accept the argument advanced by learned counsel Shri Patel for the second party workman before me that by keeping grudge and victimization against the workman, he was transferred and inquiry is held, in view of circumstances as aforesaid"

Transfer of an employee is subject to judicial scrutiny by this Court only on two grounds, namely, (i) where it is as a result of malafide of the authority or (ii) where

the authority in making of the same, has violated some statutory provisions. Once this Court, in the special civil application, has considered this aspect and held that the transfer of respondent-workman was not malafide, it was not necessary or obligatory on the part of the Labour Court to go on whether this order has been made as a grudge or victimization against the workman concerned. However, the Tribunal has gone on this question and accepted it to be an order of transfer of respondent-workman simplicitor and not as a result of any malafide or victimization. After these findings of facts, it is a case where the Labour Court should not have interfered with the punishment inflicted on the workman. The respondent-workman has shown flagrant disregard to the order of the superior officer. He has disobeyed the orders to the extent that he has not cared to comply with the order even after it was not stayed or kept in abeyance either by any court or higher officer. For such a serious misconduct, only penalty should have been dismissal, termination or removal of the workman from services. Here reference may have to the decision of the apex court in the case of Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani (supra). In that case, their Lordships, Supreme Court, in para-4 held:

> 4. ...Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. in the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

##. The Labour Court has framed two points for consideration on this question, firstly, whether the punishment inflicted on the workman is excessive or not and secondly, whether the same requires to be reduced.

It has interfered with the punishment inflicted on the workman after recording reasons, namely (i) the past record of the workman does not appear to be bad, and (ii) it has not been proved and established by the Corporation that earlier also, the workman has committed misconduct or irregularity of grave nature causing financial damage or damage of any kind to the institution, (iii) the offence which has been committed by the second party workman is not to obey (to commit breach of orders) the orders of the superior officer, to commit breach of discipline within the place of institution, remaining absent without leave frequently, (iv) it transpires that in the instant case during departmental inquiry proceedings the workman has forwarded his leave report, meaning thereby, the contention or issue of the Corporation of workman remaining absent without leave cannot be sustained, (v) even if it is believed that charge levelled against workman by the Corporation of not obeying orders of superior officer and acting in a manner committing breach of discipline has substance, no financial damage or loss is caused to the institution because of that and for such trifle (petty) matter, termination or dismissal of workman and thereby to lead himself as well as his family to economic death, in my view appears to be excessive, disproportionate (keeping in view of the misconduct committed by workman), After that, the Labour Court has said, "in my categoric/ clear view, in such cases, the first party institution could have inflicted punishments of different nature like to stop the increment of the workman, to impost fine, reduction in rank etc." Then it concluded that punishment of termination of services keeping in view misconduct committed by workman, appears to be excessive (disproportionate) and it appears to be just proper and in the interest of justice to interfere with the same.

##. After recording all these findings ultimately, the Labour Court has not awarded any penalty to him and straightway passed the order for reinstatement of workman in service. The Labour Court has said that in exercise of powers conferred on it in view of the provisions of Sec.11A of the Act 1947, it appears just and proper to reduce the punishment inflicted on the workman. Despite of these findings, and earlier finding recorded as reproduced above, it has not substituted the penalty of dismissal or termination by any other penalty. It straighway raised another question of payment of full backwages and instead of awarding full backwages it has awarded 30% backwages. Whatever grounds prevailed with the Labour Court, it considered it to be a fit case where it has to make interference in the order of management

inflicting penalty of dismissal or termination of the workman. It is suffice to say that though it is held that lesser penalty is to be substituted, it has not substituted any penalty for dismissal or termination. Be that as it may, it is not very important for the reason that I am satisfied that it is not a case where any interference should have been made in the order of the corporation inflicting penalty of dismissal/ termination of the workman from service. The reasons given for interference in the matter are perverse and arbitrary. Past record of workman even if it is not bad, I fail to see how it can be a ground to interfere with the penalty when the respondent-workman has not carried out the transfer order which has been passed on 3.1.87 even till his services were terminated or he was dismissed from services, i.e. 6.9.91. Not only this, he has challenged this order before this court and he failed in the challenge but still he has chosen not to join services. It is not the case where there is some delay in joining at the transferred place but it is case where the respondent-workman has not cared and not worried to join at the transferred place at all. This conduct of respondent-workman is not only a serious and grave misconduct but he rendered himself to be totally unfit to continue in service. This is a height of indiscipline by respondent-workman which should not have been tolerated by the Labour Court merely because it has powers to interfere with the penalty inflicted by the management for proved misconduct under Section 11-A of the Industrial Disputes Act, 1947. It cannot be taken to be a power without any restriction or control or as if it is a power where the Labour Court can do anything what it likes or considers. These powers are to be exercised in the facts of a given case. Merely because these powers are there, it is the case of a workman who has been dismissed from service and the matter is before Labour Court, it does not mean nor it gives any power to the Labour Court to proceed under the presumption and assumption that it's existence is only for giving relief to workmen. Indiscipline in service is rampant and in case where the Tribunal or Labour Courts are taking the matters lightly, as what it has been done in the present case, then despite of this serious and grave misconduct and indiscipline the workman will get all the benefits of service. He has been reinstated and has only suffered loss of salary of 70%. The service is more important which he got. This power, as what it is taken to be under Section 11-A of the Industrial Disputes Act, 1947, has in fact, in this case been misapplied and misused by the Labour Court. It is the case where no interference should have been made. In every case of dismissal and

termination of service of workman, there may be a case of economic death but if this is the only consideration to be taken then from all the service and discipline and appeal rules as well as Standing Orders, punishment of dismissal, removal, termination from services will be deemed to have wiped off or removed. For grave misconduct this punishment can be given and these considerations that he will lose job or family will suffer are extraneous considerations in such matters. Then rule will be whatever may be the misconduct, the penalty should have been only of minor nature and not these major penalties. The other ground given for interference with the penalty that earlier the workman has not committed any misconduct or irregularity of grave nature causing financial damage or damage of any kind to the institution is another extraneous consideration. If we go by this reasoning of the Labour Court then what it suggests that atleast a workman should have a licence or liberty to commit three or four times grave and serious misconduct and then only major penalty can be given to him or that atleast one opportunity or licence should be available to him to do serious and grave misconduct. That is not the law nor the requirement of law. Whether it is the first or second or third misconduct is not consideration. It is no more res-integra that in such matters what penalty has to be given for proved misconduct is the sole domain of the employer and in case where this punishment was found to be totally disproportionate or excessive to the extent where it touches conscience of the Tribunal or the Labour Court or the Court then only interference can be made but not as a rule or right. In case this approach is accepted of the Labour Court, then this managerial functions will become redundant and the Labour Court will virtually act as an appellate authority over the decision of the disciplinary authority. It cannot be said to be a case of trifle nature. Similarly also, the finding of the Labour Court has no relevance in the matter that during departmental inquiry the workman has forwarded his leave report. How far it is relevant? If the petitioner has been transferred he has to carry out the transfer order and in case he has some difficulty then he could have made a representation or where there is some necessity of leave he could have applied for leave thereafter. This approach of respondent-workman to give leave application without joining at the transferred place is another serious misconduct. How he could have applied for leave without first joining at the transferred place and that too when this court has not protected him and the department started departmental inquiry for this grave and serious misconduct against him. By merely filing of

leave application it cannot be taken to be a case of nature where interference of Labour Court is warranted in penalty inflicrted to the workman for proved misconduct. The reasons given for interfering with the punishment inflicted by the Corporation upon the respondent-workman in the facts of this case are perverse. Not only this, I find sufficient merits in the contention of the learned counsel for the petitioner that the award is also otherwise perverse as the Labour Court has not substituted any penalty for penalty of dismissal/termination. It is correct to contend by learned counsel for the petitioner that withholding of 70% of backwages cannot be said to be a substitution of alternative penalty. Withholding of backwages is not a penalty provided under the Standing Orders. In case where a grave and serious misconduct has been proved, the Labour Court while interfering with the penalty could have justified not to award a penny to the delinquent employee towards backwages. Entitlement for backwages fully may be there in case where ultimately the respondent-workman was found to be totally exonerated of the charges. The Labour Court has discretion to award or not to award backwages in the matter where it has decided to inflict alternative penalty. Withholding of backwages cannot be termed to be a penalty more so a substituted penalty. It is also not taken to be a substituted penalty by the Labour Court nor it is the contention of the learned counsel for the respondent-workman. In the matter of what appropriate penalty could have been given for proved misconduct and the powers of the court of interference therein, reference may have to the decision of the Apex Court in the case of B.C. Chaturvedi v. Union of India & Ors. reported in JT 1995(8) 65.

##. Though the Labour Court's power may be little bit wider, in such matter than courts Section 11-A of the Act, 1947, no doubt empowers the Labour Court to interfere with the penalty inflicted upon workman by the management in appropriate case but it is not a free power where it can do anything what it likes. Sufficient guidelines are to be taken from the courts' decisions and only where punishment is disproportionate or harsh or touching the conscience of the Labour Court, interference could have been made but not as a rule or right. In such cases, if the award is passed by the Labour Court of reinstatement with 30% backwages, then it will certainly turn into perverse awards. In fact, for the grave and serious misconduct, as rightly contended by Mr.Patel, learned counsel for the petitioner, the respondent-workman has been rewarded or he got a lottery. Decision of the apex court in the case of Lucas India

Services Ltd. v. Labour Court, Madras (supra) fully supports the contention of the learned counsel for the petitioner. The Apex Court has held:

> Special leave granted.
>
> 2. Heard counsel on both sides. We find it difficult to appreciate how the Tribunal could have directed the management to pay back-wages from 28 February 1985 to 19 May 1992 even after upholding the order of dismissal from service. The respondent-employee did not join service at Bangalore, pursuant to the order of transfer. Indisputably, the post was a transferable one. He was, therefore, subjected to a domestic inquiry and after the findings were returned he was visited with the penalty of dismissal from service. The employer showed indulgence by giving him an opportunity to join even after the findings were returned but the employee was adamant and did not join and brought upon himself the order of dismissal. The High Court in Para 12 of the order states that the order directing payment of back-wages is incongruous and inconsistent but refused to interfere with the award. We find that the reasons given for granting back-wages for a period of over six years are thoroughly unsustainable. In the result, we allow the order to stand. We, therefore, set aside the order of the Tribunal directing the management to grant back-wages for the period 28 February 1986 to 19 May 1992, and the subsequent orders affirming the same by the High Court and hold that in the facts and circumstances of the case the employee is not entitled to any amount by way of back-wages. We, therefore, set aside that portion of the order of the Tribunal as affirmed by the High Court. The amount deposited by the appellant pursuant to our order shall be returned to the appellant. The appeal will stand disposed of accordingly with no order as to costs.

##. It is a clear case where the respondent-workman was adamant and did not join at the transferred place and he himself is responsible for his order of dismissal/termination from services.

##. The learned counsel for the respondent, though has made reference to many of the decisions already noticed above, none of the decision is of any help to respondent-workman in the facts of this case. Each case has to be decided on its own facts. In the facts of this

case none of the case relied upon by learned counsel for the respondent is applicable to this case, I do not consider it to be necessary to discuss each and every authority cited by learned counsel for the respondent in this judgment.

##. As a result of aforesaid discussion, this writ petition succeeds and the same is allowed and the award of the Labour Court is quashed and set aside. Rule is made absolute. The respondent is directed to pay Rs.5,000/= as costs of this writ petition to the petitioner.

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[sunil]